

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

LANCE STOUT, *et al.*

v.

Case No. 13cv753 WJ/GBW

UNITED STATES MARSHALS SERVICE, *et al.*

ORDER VACATING RULE 16 CONFERENCE AND TO SHOW CAUSE

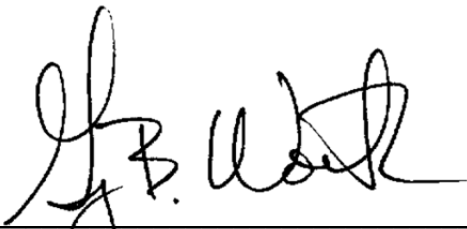
THIS MATTER is before the Court on Defendant United States Marshals Service's Motion to Set Aside the Initial Scheduling Order. Plaintiffs filed the instant complaint on July 19, 2013. *Doc. 1.* An electronic summons was issued as to Defendant on July 22, 2013. No certificate of service regarding the complaint was filed with the Court. On August 9, 2013, Assistant United States Attorney Scott Maule entered his appearance on behalf of the United States Marshal's service. *Doc. 5.* On the same date, Mr. Maule filed a Motion for Extension of Time requesting that the Court extend the deadline by which the United States was required to file an answer or other pleading, noting that the United States had not yet been properly served. *Doc. 6.*

Defendant filed the instant motion December 9, 2013, noting that it remained unserved. *Doc. 37.* Having reviewed the docket, there is no indication that service of process was properly effected on Defendant within 120 days, as required by Fed. R. Civ. P. 4(m). Further, although Mr. Maule entered his appearance, entry of appearance by

an attorney does not constitute a waiver of service. *Lewellen v. Morley*, 909 F.2d 1073, 1077 (7th Cir. 1990)(“ the filing of an ‘appearance form’ does not relieve plaintiff from executing proper service of process upon the defendants”); *Hudson v. Christian*, No. 93–7240, 1994 WL 315471, at *1 (D.C. Cir. June 15, 1994)(“[C]ounsel’s entry of appearance in this court constitutes service on [the defendant] is without merit”).

Defendant’s Motion is **GRANTED**. The telephonic conference pursuant to Rule 16 scheduled for January 3, 2014, is hereby VACATED. Plaintiffs are directed to show cause why the Complaint should not be dismissed as to Defendant United States Marshals Service without prejudice for failure to serve the Complaint within the time provided by law. Plaintiffs’ response to the Court’s Order to Show Cause should be filed no later than **January 15, 2014**. Upon resolution of the service issue, the Court will issue an amended scheduling order.

IT IS SO ORDERED.



GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE